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8                   **UNITED STATES DISTRICT COURT**  
9                   EASTERN DISTRICT OF CALIFORNIA

10                   DARNELL JAMES HAMMOND,

11                   Petitioner,

12                   v.

13                   UNKNOWN,

14                   Respondent.

15                   Case No. 1:25-cv-00405-KES-SAB-HC

16                   FINDINGS AND RECOMMENDATION TO  
17                   DISMISS PETITION FOR WRIT OF  
18                   HABEAS CORPUS WITHOUT PREJUDICE

19                   Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  
20 pursuant to 28 U.S.C. § 2254.

21                   On March 31, 2025, Petitioner filed the instant petition for writ of habeas corpus wherein  
22 Petitioner challenges a Kern County conviction. (ECF No. 1.) On April 11, 2025, the Court  
23 ordered Petitioner to show cause why the petition should not be dismissed for failure to exhaust  
state judicial remedies. (ECF No. 6.) On May 5, 2025, the Court received documents from  
Petitioner. (ECF No. 10.)

24                   Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a  
25 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
26 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
27 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254  
28 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

1       A petitioner in state custody who is proceeding with a petition for writ of habeas corpus  
2 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based  
3 on comity to the state court and gives the state court the initial opportunity to correct the state's  
4 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v.  
5 Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by  
6 providing the highest state court with a full and fair opportunity to consider each claim before  
7 presenting it to the federal court. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.  
8 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

9       In the petition, Petitioner argues that the trial court did not look into the factors of the  
10 murder and that his trial counsel failed to test his clothing for gunshot residue. (ECF No. 1 at 3.<sup>1</sup>)  
11 The petition indicates that Petitioner is raising these claims for the first time because neither trial  
12 counsel nor appellate counsel raised these issues. (Id. at 8.) After the order to show cause was  
13 issued, Petitioner submitted two letters from appellate counsel regarding Petitioner's direct  
14 appeal and his new appeal of a resentencing order. (ECF No. 10.) However, these letters from  
15 appellate counsel do not demonstrate that Petitioner presented his claims to the California  
16 Supreme Court. As it appears Petitioner has not sought relief in the California Supreme Court,  
17 the Court cannot proceed to the merits of his claims. 28 U.S.C. § 2254(b)(1). Accordingly, the  
18 Court finds that Petitioner's claims are unexhausted and should be dismissed without prejudice.

19       Based on the foregoing, the Court HEREBY RECOMMENDS that the petition for writ of  
20 habeas corpus be DISMISSED without prejudice for failure to exhaust state judicial remedies.

21       This Findings and Recommendation is submitted to the assigned United States District  
22 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
23 Rules of Practice for the United States District Court, Eastern District of California. Within  
24 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
25 written objections with the Court, **limited to fifteen (15) pages in length, including any**  
26 **exhibits**. Such a document should be captioned "Objections to Magistrate Judge's Findings and

27  
28 <sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

1 Recommendation.” The assigned United States District Court Judge will then review the  
2 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that  
3 failure to file objections within the specified time may waive the right to appeal the District  
4 Court’s order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
5 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.  
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Dated: July 11, 2025



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STANLEY A. BOONE  
United States Magistrate Judge

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